

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IDEAL INDUSTRIES LIGHTING LLC D/B/A
CREE LIGHTING,

Plaintiff,

v.

RAB LIGHTING INC.,

Defendant.

Case No. 1:20-cv-05424

**DEFENDANT’S UNOPPOSED MOTION TO STAY ACTION
PURSUANT TO 28 U.S.C. § 1659**

Defendant RAB Lighting Inc. (“RAB”) respectfully moves the Court to stay this case pursuant to 28 U.S.C. § 1659. In support of its Motion, RAB states as follows:

Ideal Industries Lighting LLC d/b/a Cree Lighting (“Cree”) filed this action on July 14, 2020, alleging infringement of U.S. Patent Nos. 8,403,531 (the “’531 Patent”); 8,596,819 (the “’819 Patent”); 8,777,449 (the “’449 Patent”); 9,261,270 (the “’270 Patent”); and 9,476,570 (the “’570 Patent”). On July 15, 2020, Cree filed a Complaint in the U.S. International Trade Commission (“ITC”) requesting that the ITC institute an investigation against RAB under Section 337 of The Tariff Act of 1930. In the ITC Complaint, Cree asserts infringement of the same ’531, ’819, ’449, ’270, and ’570 Patents that are at issue in this case. On August 12, 2020, the ITC issued a Notice of Investigation *In the Matter of Certain Light-Emitting Diode Products, Fixtures, and Components Thereof*, Investigation No. 337-TA-1213 (“ITC Proceeding”), which published on August 17, 2020. *See* 85 Fed. Reg. 50047 (Aug. 17, 2020).

“In a civil action involving parties that are also parties to a proceeding before the United States International Trade Commission . . . , at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission” 28 U.S.C. § 1659(a). A party must request a stay within 30 days after being named as a respondent in the ITC proceeding or 30 days after the district court action is filed, whichever is later. *Id.* Once a party so requests, a stay is mandatory. *See In re Princo Corp.*, 478 F.3d 1345, 1355 (Fed. Cir. 2007) (“We thus conclude that § 1659 requires that the stay of district court proceedings continue until the Commission proceedings are no longer subject to judicial review.”).

As noted above, the ITC Proceeding involves the same Defendant (RAB) as this civil action and alleges infringement of the same patents (the ’531, ’819, ’449, ’270, and ’570 Patents) as this civil action. Accordingly, this action involves the same issues as the ITC Proceeding and a stay of this action is required pursuant to § 1659(a). Moreover, because the Notice of Institution published on August 17, 2020, this motion is timely filed within thirty days of RAB being named as a respondent in the ITC Proceeding. *See* 85 Fed. Reg. 50047 (Aug. 17, 2020).

Counsel for RAB communicated with counsel for Cree regarding the relief requested by this motion, and Cree confirmed that it does not oppose this motion.

For the foregoing reasons, RAB respectfully requests that the Court stay this action under 28 U.S.C. § 1659(a) until the determination of the ITC, including any appeals, becomes final.

Date: August 18, 2020

Respectfully submitted,

/s/ Jonathan E. Moskin

Jonathan E. Moskin

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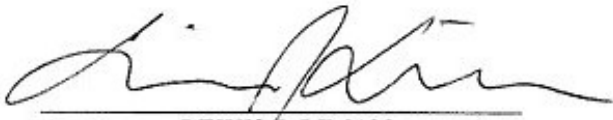
Facsimile: (212) 687-2329

Attorney for Defendant RAB Lighting Inc.

This action is hereby STAYED. All conferences and deadlines are adjourned *sine die*.

The parties are directed to file a joint letter as to the status of the ITC proceeding every four (4) months.

SO ORDERED. 9/1/2020.



LEWIS J. LIMAN
United States District Judge